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HOUSE BILL 574

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

G. X. MCSHERRY

AN ACT

RELATING TO WINEGROWERS; CONSOLIDATING LICENSES; AMENDING,
REPEALING AND ENACTING CERTAIN SECTIONS OF THE LIQUOR CONTROL
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-3A-3 NMSA 1978 (being Laws 1981,
Chapter 39, Section 3, as amended) is amended to read:

"60-3A-3. DEFINITIONS. -- As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or
rectified spirits, potable alcohol, brandy, whiskey, rum, gin
and aromatic bitters bearing the federal internal revenue strip
stamps or any similar alcoholic beverage, including blended or
fermented beverages, dilutions or mixtures of one or more of the
foregoing containing more than one-half of one percent alcohol,
but excluding medicinal bitters;

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1 B. "beer" means any alcoholic beverage obtained by
2 the fermentation of any infusion or decoction of barley, malt
3 and hops or other cereals in water, and includes porter, beer,
4 ale and stout;

5 C. "brewer" means any person who owns or operates a
6 business for the manufacture of beer;

7 D. "club" means:

8 (1) any nonprofit group, including an auxiliary
9 or subsidiary group, organized and operated under the laws of
10 this state with a membership of not less than fifty members who
11 pay membership dues at the rate of not less than five dollars
12 (\$5.00) per year and who, under the constitution and bylaws of
13 the club, have all voting rights and full membership privileges
14 and which group is the owner, lessee or occupant of premises
15 used exclusively for club purposes and which group the director
16 finds:

17 (a) is operated solely for recreation,
18 social, patriotic, political, benevolent or athletic purposes;
19 and

20 (b) the proposed licensee has been
21 granted an exemption by the United States from the payment of
22 the federal income tax as a club under the provisions of Section
23 501(a) of the Internal Revenue Code of 1954, as amended or, if
24 the applicant has not operated as a club for a sufficient time
25 to be eligible for the income tax exemption, it must execute and

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1 file with the director a sworn letter of intent declaring that
2 it will, in good faith, apply for such exemption as soon as it
3 is eligible; or

4 (2) an airline passenger membership club
5 operated by an air common carrier which maintains or operates a
6 clubroom at an international airport terminal. For the purposes
7 of this paragraph, "air common carrier" means a person engaged
8 in regularly scheduled air transportation between fixed termini
9 under a certificate of public convenience and necessity issued
10 by the civil aeronautics board;

11 E. "commission" means the secretary of public safety
12 when the term is used in reference to the enforcement and
13 investigatory provisions of the Liquor Control Act and means the
14 superintendent of regulation and licensing when the term is used
15 in reference to the licensing provisions of the Liquor Control
16 Act;

17 F. "department" means the special investigations
18 division of the department of public safety [~~department~~] when
19 the term is used in reference to the enforcement and
20 investigatory provisions of the Liquor Control Act and means the
21 superintendent of regulation and licensing when the term is used
22 in reference to the licensing provisions of the Liquor Control
23 Act;

24 G. "director" means the director of the special
25 investigations division of the department of public safety

1 [department] when the term is used in reference to the
2 enforcement and investigatory provisions of the Liquor Control
3 Act and means the superintendent of regulation and licensing
4 when the term is used in reference to the licensing provisions
5 of the Liquor Control Act;

6 H. "dispenser" means any person licensed under the
7 provisions of the Liquor Control Act selling, offering for sale
8 or having in his possession with the intent to sell alcoholic
9 beverages both by the drink for consumption on the licensed
10 premises and in unbroken packages for consumption and not for
11 resale off the licensed premises;

12 I. "distiller" means any person engaged in
13 manufacturing spirituous liquors;

14 J. "governing body" means the board of county
15 commissioners of a county or the city council or city
16 commissioners of a municipality;

17 K. "hotel" means any establishment or complex having
18 a resident of New Mexico as a proprietor or manager and where,
19 in consideration of payment, meals and lodging are regularly
20 furnished to the general public. The establishment or complex
21 must maintain for the use of its guests a minimum of twenty-five
22 sleeping rooms;

23 L. "licensed premises" means the contiguous areas or
24 areas connected by indoor passageways of a structure and the
25 outside dining, recreation and lounge areas of the structure

1 which are under the direct control of the licensee and from
2 which the licensee is authorized to sell, serve or allow the
3 consumption of alcoholic beverages under the provisions of its
4 license; provided that in the case of a restaurant, hotel or
5 racetrack, "licensed premises" includes all public and private
6 rooms, facilities and areas in which alcoholic beverages are
7 sold or served in the customary operating procedures of the
8 restaurant, hotel or racetrack;

9 M "local option district" means any county which
10 has voted to approve the sale, serving or public consumption of
11 alcoholic beverages, or any incorporated municipality which
12 falls within a county which has voted to approve the sale,
13 serving or public consumption of alcoholic beverages, or any
14 incorporated municipality of over five thousand population which
15 has independently voted to approve the sale, serving or public
16 consumption of alcoholic beverages under the terms of the Liquor
17 Control Act or any former act;

18 N. "manufacturer" means a distiller, rectifier,
19 brewer or winer;

20 O. "minor" means any person under twenty-one years
21 of age;

22 P. "package" means any immediate container of
23 alcoholic beverages which is filled or packed by a manufacturer
24 or wine bottler for sale by the manufacturer or wine bottler to
25 wholesalers;

1 Q. "person" means an individual, corporation, firm,
2 partnership, copartnership, association or other legal entity;

3 R. "rectifier" means any person who blends, mixes or
4 distills alcohol with other liquids or substances for the
5 purpose of making an alcoholic beverage for the purpose of sale
6 other than to the consumer by the drink, and includes all
7 bottlers of spirituous liquors;

8 S. "restaurant" means any establishment having a New
9 Mexico resident as a proprietor or manager which is held out to
10 the public as a place where meals are prepared and served
11 primarily for on-premises consumption to the general public in
12 consideration of payment and which has a dining room, a kitchen
13 and the employees necessary for preparing, cooking and serving
14 meals; provided that "restaurant" does not include
15 establishments as defined in regulations promulgated by the
16 director serving only hamburgers, sandwiches, salads and other
17 fast foods;

18 T. "retailer" means any person licensed under the
19 provisions of the Liquor Control Act selling, offering for sale
20 or having in his possession with the intent to sell any
21 alcoholic beverages in unbroken packages for consumption and not
22 for resale off the licensed premises;

23 U. "spirituous liquors" means alcoholic beverages as
24 defined in Subsection A of this section except fermented
25 beverages such as wine, beer and ale;

1 V. "wholesaler" means any person whose place of
2 business is located in New Mexico and who sells, offers for sale
3 or possesses for the purpose of sale any alcoholic beverages for
4 resale by the purchaser;

5 W. "wine" includes the words "fruit juices" and
6 means alcoholic beverages obtained by the fermentation of the
7 natural sugar contained in fruit or other agricultural products,
8 with or without the addition of sugar or other products, which
9 do not contain less than one-half of one percent nor more than
10 twenty-one percent alcohol by volume;

11 X. "wine bottler" means any New Mexico wholesaler
12 who is licensed to sell wine at wholesale for resale only and
13 who buys wine in bulk and bottles it for wholesale resale; [and]

14 Y. [~~"winer"~~] "winegrower" means any person who owns
15 or operates a business for the manufacture of wine and has been
16 issued a winegrower's license; and

17 Z. "winer" means a winegrower."

18 Section 2. Section 60-6A-11 NMSA 1978 (being Laws 1981,
19 Chapter 39, Section 28, as amended) is amended to read:

20 "60-6A-11. WINEGROWER'S LICENSE. --

21 A. Exempt from the procurement of any other license
22 [~~under~~] issued pursuant to the terms of the Liquor Control Act,
23 but not from the procurement of a winegrower's license, is any
24 person in this state who produces wine. Except during periods
25 of shortage or reduced availability, at least fifty percent of a

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1 winegrower's overall annual production of wine shall be produced
2 from wine grapes or other agricultural products grown in this
3 state pursuant to regulations adopted by the director.

4 B. ~~[Any]~~ A person issued a winegrower's license
5 pursuant to ~~[Subsection A of]~~ this section may do any of the
6 following:

7 (1) manufacture or produce wine, including
8 blending, mixing, flavoring, coloring, bottling and labeling,
9 whether the wine is manufactured or produced by or for the
10 winegrower;

11 (2) store, transport, import or export wines;

12 (3) sell wines to a holder of a New Mexico
13 winegrower's, ~~[winer's]~~ wine wholesaler's, wholesaler's or wine
14 exporter's license or to a winegrower's agent;

15 (4) deal in warehouse receipts for wine;

16 ~~[(4)]~~ (5) sell wines in other states or foreign
17 jurisdictions to the holders of any license issued under the
18 authority of that state or foreign jurisdiction authorizing
19 ~~[such a]~~ the purchase of wine;

20 ~~[(5)]~~ (6) buy wine or distilled wine products
21 from other persons, including licensees and permittees under the
22 Liquor Control Act, for use in blending, mixing or bottling of
23 wines;

24 ~~[(6)]~~ (7) conduct wine tastings and sell, by
25 the glass or the bottle or sell in unbroken packages for

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1 consumption off premises but not for resale, wine of his own
2 production on the winegrower's premises; [~~and~~
3 ~~(7)] (8) at no more than [~~two~~] three
4 off-premises locations, conduct wine tastings and sell in
5 unbroken packages for consumption off premises, but not for
6 resale, wine of his own production after the director has
7 determined that the off-premises locations meet the requirements
8 of the Liquor Control Act and the department regulations for new
9 liquor license locations;~~

10 (9) be deemed a manufacturer for purposes of
11 the Gross Receipts and Compensating Tax Act;

12 (10) at public celebrations on or off the
13 winegrower's premises, after the winegrower has paid the
14 applicable fees and been issued the appropriate permit, to
15 conduct wine tastings, sell by the glass or the bottle or sell
16 in unbroken packages for consumption off premises but not for
17 resale, wine produced by or for the winegrower; and

18 (11) apply to the department for a permit to
19 join with other licensed winegrowers to sell wine produced by or
20 for winegrowers at a common facility at which there may be
21 products of two or more licensed winegrowers offered for tasting
22 and sales by the glass or bottle or for sale in unbroken
23 packages for consumption off premises but not for resale.

24 C. Except as limited by Subsection D of Section
25 60-7A-1 NMSA 1978, sales of wine as provided for in [~~Paragraphs~~

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1 ~~(6) and (7) of Subsection B of~~ this section shall be permitted
2 between the hours of 7:00 a.m. and midnight Monday through
3 Saturday, and the holder of a winegrower's license may conduct
4 wine tastings and sell, by the glass or bottle or in unbroken
5 packages for consumption off premises but not for resale, wine
6 of his own production on the winegrower's premises between the
7 hours of 12:00 noon and midnight on Sunday.

8 D. At public celebrations off the winegrower's
9 premises in any local option district permitting the sale of
10 alcoholic beverages, the holder of a winegrower's license [~~upon~~
11 ~~the payment of~~] shall pay ten dollars (\$10.00) to the department
12 for a "winegrower's public celebration permit", to be issued
13 under rules adopted by the director [~~may conduct tastings, sell~~
14 ~~in unbroken packages for consumption at other than the public~~
15 ~~celebration, but not for resale, and sell, for consumption at a~~
16 ~~public celebration, wine of his own production~~]. Upon request,
17 the department may issue to a holder of a winegrower's license a
18 public celebration permit for a location at the public
19 celebration that is to be shared with other permittees. As used
20 in this subsection, "public celebration" includes any state or
21 county fair, community fiesta, cultural or artistic event or
22 sporting competition of a seasonal nature or activities held on
23 an intermittent basis.

24 E. Every application for the issuance or annual
25 renewal of a winegrower's license shall be on a form prescribed

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1 by the director and accompanied by a license fee to be computed
2 as follows on the basis of total annual wine produced or
3 blended:

4 (1) less than five thousand gallons per year,
5 twenty-five dollars (\$25.00) per year;

6 (2) between five thousand and one hundred
7 thousand gallons per year, one hundred dollars (\$100) per year;
8 and

9 (3) over one hundred thousand gallons per year,
10 two hundred fifty dollars (\$250) per year."

11 Section 3. Section 60-6A-22 NMSA 1978 (being Laws 1983,
12 Chapter 280, Section 3, as amended) is amended to read:

13 "60-6A-22. DEFINITIONS.--As used in the Domestic Winery
14 and Small Brewery Act:

15 A. "brandy" means an alcoholic liquor distilled from
16 wine or from fermented fruit juice;

17 B. "beer" means any fermented beverage containing
18 more than one-half percent alcohol obtained by the fermentation
19 of any infusion or decoction of barley, malt and hops or other
20 cereal in water, and includes porter, beer, ale and stout;

21 C. "small brewer" means any person who owns or
22 operates a business for the manufacture of beer but does not
23 manufacture more than two hundred thousand barrels of beer per
24 year;

25 D. "public celebration" means any state fair, county

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1 fair, community fiesta, cultural or artistic performance;

2 E. "wine" means the product obtained from normal
3 alcoholic fermentation of the juice of sound ripe grapes or
4 other agricultural products containing natural or added sugar,
5 or any such alcoholic beverage to which is added grape brandy,
6 fruit brandy or spirits of wine which is distilled from the
7 particular agricultural products of which the wine is made, and
8 other rectified wine products by whatever name which do not
9 contain more than fifteen percent added flavoring, coloring and
10 blending material and which contain not more than twenty-four
11 percent of alcohol by volume, and includes vermouth;

12 F. "wine blender" means a person authorized to
13 operate a bonded wine cellar pursuant to a permit issued for
14 that purpose under the internal revenue laws of the United
15 States but who does not have facilities or equipment for the
16 conversion of grapes, berries or other fruit into wine and does
17 not engage in the production of wine in commercial quantities;
18 provided that any person who produces or blends not to exceed
19 three hundred gallons of wine per year shall not, because of
20 such production or blending, be considered a wine blender; and

21 G. "winer" means ~~[any person who has facilities and~~
22 ~~equipment for the conversion in New Mexico of grapes, berries or~~
23 ~~other fruit into wine and is engaged in the commercial~~
24 ~~production of wine; provided that any person who produces not to~~
25 ~~exceed two hundred gallons of wine per year for his own~~

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1 ~~consumption shall not, because of such production, be considered~~
2 ~~a winer]~~ a person licensed as a winemaker. "

3 Section 4. Section 60-6A-24 NMSA 1978 (being Laws 1983,
4 Chapter 280, Section 5, as amended) is amended to read:

5 "60-6A-24. WINE BLENDER'S LICENSE. --

6 A. In any local option district, a person qualified
7 under the provisions of the Liquor Control Act, except as
8 otherwise provided in the Domestic Winery and Small Brewery Act,
9 may apply for and be issued a wine blender's license.

10 B. A wine blender's license authorizes the person to
11 whom it is issued to ~~[exercise all the privileges of a winer's~~
12 ~~license except]:~~

13 (1) package, rectify, blend, mix, flavor,
14 color, label and export wine, whether manufactured or produced
15 by him or any other person;

16 (2) sell only such wine as is packaged by or
17 for him to a person holding a New Mexico wine wholesaler's,
18 wholesaler's, winemaker's or wine exporter's license or to a
19 winemaker's agent;

20 (3) deal in warehouse receipts for wine; and

21 (4) be deemed a manufacturer for purposes of
22 the Gross Receipts and Compensating Tax Act.

23 C. A wine blender's license does not authorize the
24 person to whom it is issued:

25 (1) to crush, ferment and produce wine from

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1 grapes, berries and other fruits;

2 (2) to obtain or be issued a winer's license, a
3 retailer's license or a dispenser's license;

4 (3) to buy, sell, receive or deliver wine from
5 persons other than authorized licensees; or

6 (4) to conduct wine tasting or sell for
7 consumption off premises, at retail, or to sponsor wine
8 tastings, either on or off the wine blender's premises. "

9 Section 5. Section 60-6A-27 NMSA 1978 (being Laws 1983,
10 Chapter 280, Section 8, as amended) is amended to read:

11 "60-6A-27. LICENSE FEES. -- Every application for the
12 issuance or annual renewal of the following licenses and permits
13 shall be accompanied by a license fee or permit fee in the
14 following specified amounts:

15 A. brandy manufacturer's license, seven hundred
16 fifty dollars (\$750);

17 B. small brewer's license, seven hundred fifty
18 dollars (\$750);

19 [~~C. winer's license, seven hundred fifty dollars~~
20 ~~(\$750);~~

21 ~~D.] C. wine blender's license, seven hundred fifty~~

22 dollars (\$750); and

23 [~~E.] D. wine exporter's license, five hundred~~

24 dollars (\$500)

25 [~~F. winer's off premise permit, two hundred dollars~~

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1 ~~(\$200) for each off-premises location; and~~

2 ~~G. winer's public celebrations permit, ten dollars~~
3 ~~(\$10) for each public celebration]. "~~

4 Section 6. Section 60-6A-29 NMSA 1978 (being Laws 1988,
5 Chapter 60, Section 1) is amended to read:

6 "60-6A-29. WINE WHOLESALER'S LICENSE. --

7 A. In any local option district, a winegrower [~~or~~
8 ~~winer~~] licensed under the Liquor Control Act may apply for and
9 be issued a license as a wine wholesaler of wines produced by or
10 for New Mexico winegrowers [~~or winers~~].

11 B. No wine wholesaler shall sell, offer for sale or
12 ship wine not received at and shipped from the premises
13 specified in the wine wholesaler's license.

14 C. No wine wholesaler shall sell or offer for sale
15 wine to any person other than the holder of a New Mexico wine
16 wholesaler's, wholesaler's, retailer's, dispenser's, canopy,
17 restaurant or club license or a governmental licensee or its
18 lessee.

19 D. Nothing contained in this section shall prevent
20 the sale, transportation or shipment of wine by a wine
21 wholesaler to any person outside the state when shipped under
22 permit from the department. "

23 Section 7. A new section of the Liquor Control Act is
24 enacted to read:

25 " [NEW MATERIAL] INTERSTATE WINE TASTINGS--COMPETITIONS--

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1 PERMITS. --

2 A. Exempt from the procurement of any other license
3 or permit issued pursuant to the terms of the Liquor Control
4 Act, but not exempt from the procurement of a competition
5 permit, is a winemaker or winery licensed outside of New Mexico
6 that desires to participate in a regional wine tasting or
7 competition within New Mexico. One permit shall be issued by
8 the director to an out-of-state winemaker or winery for the
9 duration of the wine tasting or competition.

10 B. A person issued a competition permit pursuant to
11 this section may do any of the following:

12 (1) bring no more than twenty-five cases of
13 wine into New Mexico after indicating on his permit application
14 the number of cases to be brought into the state;

15 (2) participate in the regional competition and
16 any wine tastings associated with the competition for which the
17 competition permit is issued;

18 (3) participate in the regional wine tasting
19 for which the competition permit is issued; and

20 (4) at a wine tasting for which he is issued
21 the permit, conduct wine tasting and sell by the glass or bottle
22 or in unbroken packages for consumption off the wine tasting
23 premises but not for resale, wine brought into the state by him
24 for the wine tasting or competition.

25 C. Every application for the issuance of a

Underscored material = new
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1 competition permit shall be on a form prescribed by the director
2 and accompanied by a permit fee of twenty-five dollars (\$25.00).

3 D. As used in this section:

4 (1) "competition" means an event at which a
5 jury of wine tasters compares the quality of the wines entered
6 for judging and at which prizes are offered for the wines judged
7 to be of the best quality;

8 (2) "regional competition" means a competition
9 at which the wines to be judged are from more than one state or
10 country;

11 (3) "regional wine tasting" means a wine
12 tasting at which the wines offered for tasting are from more
13 than one state or country;

14 (4) "winemaker" means a person who manufactures
15 or produces wine;

16 (5) "winery" means an establishment at which
17 wine is manufactured or produced and that is licensed for that
18 purpose by the state or country in which it is located; and

19 (6) "wine tasting" means an event at which
20 wines are offered for tasting but not necessarily for sale and
21 not for comparison for the purpose of awarding prizes to the
22 wines of the best quality."

23 Section 8. REPEAL. -- Section 60-6A-23 NMSA 1978 (being Laws
24 1983, Chapter 280, Section 4, as amended) is repealed.

25 Section 9. EFFECTIVE DATE. -- The effective date of the

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1 provisions of this act is June 1, 1997.

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State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 25, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 574

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 10, line 3 after "license", insert "or public
celebration permit".,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMITTEE.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBIC/HB 574

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Respectfully submitted,

Fred Luna, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Hobbs

Absent: Getty

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 4, 1997

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 574, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Coll, Heaton, Knowles, Marquardt, Picraux, Taylor, JP,
Varela, Watchman

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE BILL 574, as amended

has had it under consideration and reports same with recommendation that it DO PASS.

Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____ Not Adopted _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Rodarte, Smith, Ingle, Vernon

Absent: None

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